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August 16, 2012

Marlene H. Dortch Secretary Federal Communications Commission 445 Twelfth Street, SW Washington, DC 20554

Re: Consolidated Review of Verizon Wireless – SpectrumCo – Cox, Verizon Wireless – Leap Wireless, and T-Mobile – Verizon Wireless Transactions, WT Docket Nos. 12-4 and 12-175, ULS File Nos. 0004942973 et al.

Dear Ms. Dortch,

On Monday August 15th, Verizon Wireless wrote the Commission offering commitments that it thinks will "put... to rest" the concerns raised by numerous parties that without strong buildout conditions these spectrum transfers will not serve the public interest. The Commission should recognize that Verizon's voluntary buildout commitment is a meaningless gesture that will do nothing to promote competition or efficient use of the public airwaves during a time of a supposed looming spectrum crisis. ²

Verizon has offered a two-part buildout commitment, first agreeing to serve 30 percent of the *total* population in the Economic Areas (EAs) where it is acquiring new AWS spectrum. Verizon then commits to serving 70 percent of the population in *each* EA within seven years.

Through this commitment we see yet another tacit admission by Verizon that it has badly overstated its need for the amount of AWS spectrum it seeks to acquire. Because Verizon's commitment focuses on the geographically larger Economic Areas, and not Cellular Market Areas (CMAs), Verizon is attempting to gain FCC approval to redline rural, suburban and exurban America. This outcome is certainly not in the public interest.

¹ Letter from Kathleen Grillo, Senior Vice President, Federal Regulatory Affairs, Verizon, to Rick Kaplan, Senior Counsel for Transactions, Federal Communications Commission, WT Docket Nos. 12-4 and 12-175, August 15th, 2012.

² See e.g. Remarks of Chairman Julius Genachowski, Federal Communications Commission, "America's Mobile Broadband Future," International CTIA WIRELESS I.T. & Entertainment, San Diego, California, October 7, 2009. ("I believe that that the biggest threat to the future of mobile in America is the looming spectrum crisis.").

Despite Verizon's repeated insistence that it is facing a *near-term* spectrum crisis in *most* of its markets, large and small, the best Verizon is willing to agree to is essentially turning on its 700 MHz C Block/AWS aggregated LTE-Advanced network to a few large cities in three years, something it has publicly indicated was *already* planning to do with its current AWS holdings. The second half of the commitment simply means Verizon will slowly begin to use *some* of its remaining massive AWS spectrum holdings by the end of 2019, again despite its repeated pleads of near-term spectrum poverty in these areas as well. While this commitment is better than the current 2021 "substantial service" AWS buildout requirement, it is worse than the precedent the Commission set with the relatively stronger (though still weak) 'use it or lose it' buildout conditions attached to the 700 MHz spectrum.

By leaving large swaths of valuable public airwaves fallow at a time of a supposed spectrum crisis this meaningless buildout commitment serves to exacerbate the problems of spectrum hoarding. We continue to believe the evidence supports a finding that these transactions as proposed fail to meet the Commission's public interest balancing test. Thus, we reiterate that the Commission's best course of action is to acknowledge that Verizon has no need for the full amount of spectrum it seeks, and require divestiture such that Verizon controls no more than 30 MHz of AWS in any given county.

But if the FCC truly believes that the wireless market, and Verizon specifically is facing a looming spectrum shortage then it should reject this meaningless buildout pledge. Based on the evidence in this proceeding it is clear the public interest can only be served if the Commission adopts a county-level "use it or share it" buildout requirement. This would require Verizon to serve the substantial majority of the population in each county within three years. If it fails to do so, the spectrum would then be made available for unlicensed use until Verizon meets its buildout obligations, or until the expiration of the license term, upon which the license would be forfeited and the spectrum returned to the Commission.

We of course expect Verizon will react negatively to the mere suggestion that it be required to use these valuable public assets to serve *all* Americans, and not be allowed to perpetually squat on large swaths of the public's airwaves. But there is simply no getting around the fact that at a time of a supposed spectrum crisis, the Commission has a duty to see that all spectrum is used efficiently.

Verizon is seeking the FCC's blessing to avoid serving non-urban areas while ensuring no other provider can use the spectrum. We strongly urge the FCC to go beyond Verizon's hollow promises and ensure that these valuable airwaves are used to serve all Americans, either by Verizon or by any of the other providers who stand ready to make use of these airwaves today.

³ This is because the 3-year commitment is for 30 percent of the *total* population of the EAs involved in these transactions, *not* 30 percent of the population *within each* EA. In practice this means Verizon could meet this buildout requirement by simply turning on 20 MHz of its (on average) 40 MHz of AWS in the largest metropolitan markets on the east coast, while letting all 40 MHz of AWS remain fallow for the other areas, and letting the 20 MHz of AWS it already owns remain unused until the original 2021 substantial service buildout deadline.

As the Commission moves beyond these immediate transactions, it is abundantly clear that it must heap copious amounts of skepticism on carriers with market power pleading spectrum poverty. In particular, the Commission cannot conclude that further spectrum acquisitions are in the public interest until existing holdings are fully built out.

Sincerely,

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S. Derek Turner Research Director Free Press dturner@freepress.net

cc (via email): David Goldman David Grimaldi Rick Kaplan Paul Murray Louis Peraertz